

STATE OF MICHIGAN
COURT OF APPEALS

UZNIS DEVELOPMENT COMPANY,

Plaintiff-Appellee,

v

WILLIAM Y. CAMPBELL, Individually and as
Trustee of the WILLIAM Y. CAMPBELL
REVOCABLE TRUST,

Defendant-Appellant,

and

CHARTER ONE BANK, F.S.B., d/b/a FIRST
FEDERAL OF MICHIGAN, THE BANK OF
BLOOMFIELD HILLS, and MICHIGAN
DEPARTMENT OF COMMERCE,
HOMEOWNER CONSTRUCTION LIEN
RECOVERY FUND,

Defendants.

Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by right the order affirming the final arbitration award and denying defendant's motion to vacate the arbitration award in this contract dispute. We affirm.

Defendant argues that the arbitrator's decision to bifurcate its consideration of liability and damages resulted in the preclusion of evidence that plaintiff breached its duties under the construction management agreement. Specifically, defendant contends that the arbitrator erred in ruling that plaintiff functioned as a construction manager rather than a general contractor. This ruling meant that plaintiff was not liable for faulty or defective work of contractors. Defendant further asserts that the arbitrator failed to address plaintiff's separate liability for failure to perform its contractual duties as the construction manager on this project. We review de novo orders to enforce, vacate, or modify an arbitration award. *Cusumano v Velger*, 264 Mich App 234, 235; 690 NW2d 309 (2004).

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Defendant argued that plaintiff breached various provisions of the construction management agreement between the parties for this renovation project. Despite contending he was denied the opportunity to present evidence of plaintiff's breach of its duty as construction manager, plaintiff's project supervisor admitted failing to maintain data and records required by the agreement. Defendant thoroughly discussed plaintiff's alleged liability for breach of contract in the brief he submitted to the arbitrator before the interim award.

During the arbitration hearing, defendant asserted plaintiff was liable for breaching his duties as construction manager because he violated various terms of the construction management agreement. Despite defendant's assertions that he was precluded from providing evidence on this issue, plaintiff's owner acknowledged that he never submitted certified payment applications and did not maintain daily logs of project activity the contract required.

Further, although defendant contends the arbitrator restricted his experts from testifying regarding plaintiff's liability as a construction manager, one of defendant's experts testified to the absence of certificates of payment and that plaintiff failed to provide change orders during the course of the construction. Also, defendant offered testimony the construction management agreement was violated when subcontractors failed to submit insurance certificates to plaintiff. A defense expert also opined that plaintiff failed to "use his best efforts to endeavor to guard Mr. Campbell in this project," as mandated by the contract language.

Defendant also claims the arbitrator failed to permit defendant's other experts to testify. However, the arbitrator specifically received the experts' reports in evidence. Further, the arbitrator stated he would not preclude defendant from submitting any evidence. Defendant personally testified regarding cost overruns, defective work, and plaintiff's failure to properly monitor the amount and quality of work being performed. The colloquy between defendant's counsel and the arbitrator confirmed the arbitrator possessed the defense experts' reports; at one point, defense counsel outlined one report's list of items that plaintiff had not addressed or completed.

Notably, the arbitrator permitted defendant to both submit the reports of all his experts and photographs of the damaged areas. Significantly, the testimony defendant alleges to have been precluded was not identified as being different in content or substance from the evidence admitted through the experts' reports and photographs.

Our review of the arbitration record reveals that the arbitrator permitted defendant to offer testimony and evidence regarding plaintiff's failure to perform under specific provisions of the construction management agreement. In addition, the arbitrator admitted into evidence defendant's experts' reports, photographs and a multitude of invoices and documentation regarding plaintiff's performance. Hence, defendant's assertion that the trial court was required to vacate the arbitration award under MCR 3.602(J)(1) because the arbitrator refused to consider or permit the introduction of evidence lacks merit.

Moreover, we view the essence of defendant's argument to be that the arbitrator improperly weighed rather than precluded evidence. But this Court cannot review a claim that an arbitrator's award is contrary to the great weight of the evidence. *Donegan v Michigan Mut Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986). When a dispute is properly submitted

to arbitration, the arbitrator rather than the courts determines the procedure to follow. *Amtower v Wm C Roney & Co (On Remand)*, 232 Mich App 226, 231; 590 NW2d 580 (1998).

Because the record does not support defendant's claims, we conclude the trial court properly affirmed the final arbitration award.

We affirm.

/s/ Michael J. Cavanagh

/s/ Jane E. Markey

/s/ Patrick M. Meter